



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 174977

PRELIMINARY RECITALS

Pursuant to a petition filed on June 13, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on July 26, 2016, by telephone. The record was held open post-hearing for the Petitioner to submit additional information. Additional information was received on August 12, 2016 and the record was closed.

The issue for determination is whether the agency properly modified the Petitioner's prior authorization request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner is 61 years old and lives alone. His primary diagnosis is chronic back pain. Functional limitations include endurance and ambulation. He uses a walker or cane for ambulation.
3. On October 7, 2015, a PA request was submitted by the Petitioner's provider [REDACTED] requesting PCW services of 25 units/week starting October 1, 2015. That request was approved by the agency.
4. On March 29, 2016, an amendment to the PA request was submitted by [REDACTED] requesting an increase in PCW services due to an increase in pain and decreased range of motion. The requested start date was March 8, 2016. That request was returned to the provider with directions to submit a new PCST and documentation to support the requested change.
5. On April 25, 2016, a personal care screening tool (PCST) was completed for the Petitioner. The assessor determined the Petitioner's has the following needs:

Bathing – Level D – Petitioner complains of chronic back pain that radiates to his posterior left leg causing numbness and pain. Dx: spinal stenosis. Gait is slow and guarded. Requires assistance getting in/out of tub and washing lower extremities.

Dressing – upper and lower body – Level C – reaching upward and bending down is painful due to spinal stenosis. Causes loss of balance. PCW to monitor and assist Petitioner with upper/lower dressing tasks.

Grooming – Level D

Eating – Level B

Mobility – Level B – Petitioner reports chronic back pain that causes loss of balance. He uses a cane and requires PCW assistance to ensure safety.

Toileting – Level C – Petitioner has difficulty twisting to clean himself. PCW assistance is required to ensure proper hygiene and safety. 2x/day.

Transferring – Level B – Petitioner reports stiffness and pain after lying or sitting too long related to back pain. He reports having to rock back and forth to get up from low surfaces. PCW assistance required to monitor and assist. Petitioner is at risk for falls.

Medication Assistance – Level B – Petitioner is forgetful

6. On May 16, 2016, the provider submitted a new PA request for 50 units/week of PCW services. The attached plan of care provided an order for 84 units/week. The requested PCW service schedule indicates that the PCW would provide assistance of 1 ½ hours, 2x/day (morning and evening) for a total of 21 hours/week.
7. On May 19, 2016, the agency issued a notice to the Petitioner informing him that the agency approved 44 units/week (11 hours/week) of PCW services as follows:

Bathing – 210 minutes/week

Dressing – upper body – 0 minutes

Dressing – lower body – 70 minutes/week

Grooming – 70 minutes/week

Eating – 0 minutes

Mobility – 0 minutes

Transfers – 0 minutes

Toileting – 140 minutes/week

Services Incidental to Tasks – 192.50 minutes/week

Total ADLs approved (per the agency summary) is 490 minutes/week + 163.33 minutes for SITs = 653.33 minutes/week (11 hours/week).

Note: the agency incorrectly calculated SITs. The Petitioner lives alone and is entitled to SITs equal to 33% of ADL time. In this case, the agency allowed 490 minutes/week for ADLs. SITs should be 161.70 minutes/week (.33 x 490). Total time the agency approved is 651.70 minutes/week. This equals 10.86 hours/week, rounded to 11 hours/week.

8. On June 13, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Personal care services are “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities, or one-fourth when the recipient lives with family. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

To determine the numbers of PCW hours, providers are required by the DHCAA to use the Personal Care Screening Tool (PCST), a tool meant to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The agency approved the maximum time generally allowed for bathing assistance. With regard to lower body dressing, grooming and toileting, the agency approved a reasonable amount of time based on the Petitioner's needs.

At the hearing, the Petitioner testified that he needs assistance with upper body dressing due to back pain. He stated that he does not need assistance every day but his range of motion is limited due to the pain. The PCST screener noted that the Petitioner requires assistance only intermittently for upper body

dressings. This is consistent with the testimony provided by the Petitioner. Because assistance is not needed regularly, I conclude it is reasonable for the agency not to allocate time for daily assistance by a PCW. Regarding eating, the Petitioner testified that he can eat independently but requires assistance with preparing meals due to not being able to stand for long periods of time. Time for meal preparation is included with services to tasks.

With regard to mobility, the Petitioner testified that he uses a cane or walker for mobility. According to the PCST Instructions, if an individual is able to ambulate around the home with or without an assistive device, PCW time is not to be allocated. Therefore, I conclude it was reasonable for the agency not to allocate PCW time for mobility for the Petitioner.

With regard to transfers, the Petitioner stated that he needs to hold someone or have someone help him due to back pain. The PCST screener reported that the Petitioner is able to transfer himself independently or with use of his cane or walker. The plan of care requests that the PCW be allocated 1 hour/day. The Petitioner needs to transfer during the day when the PCW is not there. Therefore, I conclude that the evidence demonstrate that the Petitioner is able to transfer himself or using a cane or walker and the agency reasonably did not allocate PCW time for this task.

The Petitioner stated that he stated he requires assistance with cleaning and housekeeping tasks. Some time is allocated for these tasks as part of services incidental to tasks. If Petitioner finds he needs additional assistance with supportive home care such as cleaning, laundry and housekeeping, he may want to contact the Milwaukee County Aging Resource Center at 414-289-6874 to see if he qualifies for assistance with these tasks from other programs.

Based on the evidence presented, I conclude that the agency reasonably allocated 11 hours/week of PCW assistance for the Petitioner.

CONCLUSIONS OF LAW

The agency reasonably allocated 11 hours/week of PCW assistance for the Petitioner.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of September, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 7, 2016.

Division of Health Care Access and Accountability